

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII, Rule 32 (2) (b))

Description of Case

Criminal Misc. Application No. 137 of 2006

Date of decision: -1st March, 2006

Not approved for reporting

Date: -

Initials of Judge

Note: - Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Misc. Application No. 137 of 2006**

Surendra
S/o Sri Nank
R/o Shiv Nagar, Rani Gali Bhoopatwala
Police station –Kotwali Haridwar
District – Haridwar

...Petitioner

Versus

1. State of Uttaranchal
2. Sanjay Kumar
S/o Sri Gangaram Pal
R/o Durga Nagar, Bhoopatwala
Police Station-Kotwali, Haridwar
District –Haridwar

....Respondents.

Sri Pankaj Miglani, learned counsel for the petitioner
Sri A. Rab, Additional G.A. for the State

Hon'ble J.C.S. Rawat, J.

The present petition has been filed u/s 482 Cr.P.C. for seeking relief to quash the order dated 26.11.2005 passed by the learned Judicial Magistrate, Haridwar and proceeding of Complaint case no. 1031 of 2005, Sanjay Kumar Vs. Surendra & others pending before the court of Judicial Magistrate, Haridwar.

Brief fact for the disposal of this petition are that respondent No. 2 filed a complaint against the petitioner alongwith four other persons u/s 147, 452, 323, 504, 506 I.P.C. wherein he has stated that on 05.11.2005 at about 1:00 p.m. he came to his house to have his lunch. When he entered into his house, all of a sudden, the petitioner alongwith four other persons entered into his house and they stated that they will teach him lesson. Upon that the other accused persons Om Prakash, Raj Kumar, Babloo and Bachan Singh caught hold respondent No. 2 and the petitioner alongwith Bachan Singh assaulted respondent No. 2 with the stick in their hands. Raj

Kumar also assaulted respondent No. 2 with first blows. The mother and the wife of respondent No. 2 raised alarm and all the accused persons ran away from the spot. It was also alleged that the neighbors, Sukendra, Manoj, Sonu etc. came at the spot and witnessed the incident. The complainant examined himself before the Magistrate and also produced the witnesses of the incident. The statement u/s 200 and 202 Cr.P.C. were recorded. After going through the entire evidence, learned Magistrate has taken cognizance against the petitioner and other accused persons.

Feeling aggrieved by the said order, the present petition has been filed.

I have heard learned counsel for the parties and perused the record.

It was contended that the complaint is self contradictory and in para 2 it has been stated that the petitioner alongwith four other persons entered into the house of the respondent No. 2 and the wife and the mother of the respondent No. 2 raised alarm and the applicant and the other persons ran away from the spot. It was further contended that at the first para, the names of the eyewitnesses has not been indicated but another para the names of the eyewitness has been given by the complainant. I do not find any merit in this contention because the complaint has been drafted on the same day and para 2 and 3 has been written on the same day. I find no inconsistency in this matter. The witnesses had supported the prosecution version and the evidence reveals that there is prima-facie to proceed against the accused.

The learned counsel for the petitioner contended that the story as has been indicated is highly improbable because he has filed a complaint against the respondent has been filed as counter blast of the said complaint. It was further contended that the entire complaint is malafide and no case is made out. I

have gone through the entire complaint and at this stage whether the impropriety or reliability can be believed or not, this fact can only be decided during trial. This court while exercising the jurisdiction u/s 482 Cr.P.C. is not competent to decide the controversy which is to be decided by the trial court after taking the evidence.

This court while exercising jurisdiction u/s 482 Cr.P.C. prima-facie case is made out or not, this court cannot enter into the merit of the case and the court cannot consider as to whether the evidence is reliable or not. It can be decided by the trial court.

The power of the Court under section 482 Cr.P.C. is very limited. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to this Court to quash the same in exercise of the inherent powers under section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case by the Magistrate to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by this Court. The High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court. **{See State of Karnataka Vs. M. Devendrappa & another 2002 (2) SBR p/151}**

It has been held in **M. Narayandas Vs. State of Karnataka 2004 Cri. L.J. p/822** that it is settled law that the power to quash a criminal proceeding must be exercised very sparingly and with circumspection. It must be exercised in the

rarest of rare cases. It is also settled law that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Court also cannot inquire whether the allegations in the complaint are likely to be established or not.

It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P.Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}**

In view of the above discussion, I am of the view that the petition devoids of merit and is liable to be dismissed. Accordingly, the same dismissed.

(J.C.S. RAWAT,J.)

1st March, 2006

Shiv